

## Office of the Secretary of Defense

## § 75.7

record of the testimony if such record was made).

(iv) A statement of the investigating officer's conclusions as to the underlying basis of the applicant's conscientious objection and the sincerity of the applicant's beliefs, including his reasons for such conclusions.

(v) Subject to § 75.5(e), the investigating officer's recommendations for disposition of the case, including his reasons therefor. The actions recommended will be limited to the following:

(a) Denial of any classification as a conscientious objector; or

(b) Classification as 1-A-O conscientious objector; or

(c) Classification as 1-O conscientious objector.

(vi) The investigating officer's report, along with the individual's application, all interviews with chaplains or doctors, evidence received as a result of the investigating officer's hearing, and any other items submitted by the applicant in support of his case will constitute the record. The investigating officer's conclusions and recommended disposition will be based on the entire record and not merely on the evidence produced at the hearings. A copy of the record will be furnished to the applicant at the time it is forwarded to the commander who appointed the investigating officer, and the applicant will be informed that he has the right to submit a rebuttal to the report within the time prescribed by the military service concerned.

(e) The record of the case will be forwarded to the headquarters of the officer who appointed the investigating officer where it shall be reviewed for completeness and legal sufficiency. If necessary, the case may be returned to the investigating office for further investigation. When the record is complete, the authority who appointed the investigating officer shall forward it with his personal recommendation for disposition, and the reasons therefor, through the appropriate chain of command to headquarters of the military service concerned.

(f) The headquarters of the military service concerned will make a final decision based on the entire record. Any additional information other than the

official service record of the applicant considered by the headquarters of the military service concerned which is adverse to the applicant, and which the applicant has not had an opportunity to comment upon or refute, will be made a part of the record and the applicant shall be given an opportunity to comment upon or refute the material before a final decision is made. The reasons for an adverse decision will be made a part of the record and will be provided to the individual.

(g) Processing of applications need not be abated by the unauthorized absence of the applicant subsequent to the initiation of the application, or by the institution of disciplinary action or administrative separation proceedings against him. However, an applicant whose request for classification as a conscientious objector has been approved will not be discharged until all disciplinary action has been resolved.

(h) To the extent practicable under the circumstances, during the period applications are being processed and until a decision is made by the headquarters of the service concerned, every effort will be made to assign applicants to duties within the command to which they are assigned which will conflict as little as possible with their asserted beliefs. However, members desiring to file application who are on orders for reassignment may be required by the military service concerned to submit applications at their next permanent duty station. During the period applications are being processed, applicants will be expected to conform to the normal requirements of military service and to perform satisfactorily such duties to which they are assigned. Applicants may be disciplined for violations of the Uniform Code of Military Justice while awaiting action on their applications.

### § 75.7 Action after decision.

(a) Applicants requesting discharge who are determined to be 1-O conscientious objectors by the headquarters of the service concerned will be discharged for the convenience of the Government with entry in personnel records and discharge papers that the reason for separation is conscientious objection. The type of discharge issued

## § 75.8

## 32 CFR Ch. I (7–1–05 Edition)

will be governed by the applicant's general military record and the pertinent provisions of part 41 of this title. The Director of the Selective Service System will be promptly notified of the discharge of those who have served less than one hundred and eighty (180) days in the Armed Forces. Pending separation, the applicant will continue to be assigned duties providing the minimum practicable conflict with his professed beliefs and will be expected to conform to the normal requirements of military service and to perform satisfactorily such duties to which he is assigned. Applicants may be disciplined for violations under the Uniform Code of Military Justice while awaiting discharge.

(b) Applicants requesting assignment to noncombatant duties who are determined to be class 1-A-O conscientious objectors by the military department shall be (1) assigned to noncombatant duty as defined in § 75.3, or (2) discharged from military service or released from active duty, at the discretion of the military department. Each applicant will be required to execute the statement in § 75.11.

(c) Persons who are assigned to noncombatant duties, and persons who are assigned to normal military duties by reason of disapproval of their applications, will be expected to conform to the normal requirements of military service and to perform satisfactorily such duties to which they are assigned. Violations of the Uniform Code of Military Justice by these members will be treated as in any other situation.

### § 75.8 Claims of erroneous induction.

(a) This section applies to any individual who claims that he is a conscientious objector and was either erroneously inducted, or erroneously assigned to combatant training or duty, for any of the following reasons:

(1) Although determined to be a conscientious objector by a local board or appellate agency of the Selective Service System, his records failed to reflect classification as such.

(2) He was denied a significant procedural right in the classification process by the Selective Service System.

(3) Despite actual classification as a conscientious objector properly reflected in his records, he was neverthe-

less erroneously inducted, or assigned to combatant training or duty.

Claims based on alleged erroneous determinations made on the merits of the case by the Selective Service System are not covered by this section. (See § 75.4.)

(b) Claims covered by paragraph (a) of this section will be referred to the Selective Service System without delay for investigation and ascertainment of the facts. Communication will be transmitted to the National Headquarters, Selective Service System, Washington, DC 20435.

(1) If the Selective Service System advises that induction was in fact erroneous under paragraph (a)(1) or (a)(3) of this section, the claimant will be separated or assigned to noncombatant duties depending upon whether he was classified 1-O or 1-A-O.

(2) If the Selective Service System advises that there was in fact a denial of a right or a significant procedural error in the evaluation of a claim under paragraph (a)(2) of this section, the induction will be considered erroneous and the individual discharged.

(3) If the Selective Service System advises that any claim under paragraph (a) of this section is unfounded or makes a final determination adverse to any claim, the claimant will be so informed and returned to general duty.

(c) Pending investigation and resolution of all claims covered by this section, a claimant will be assigned to duties which conflict as little as practicable with his asserted beliefs, insofar as is consistent with the effectiveness and efficiency of the military forces.

### § 75.9 Required information to be supplied by applicants for discharge or noncombatant service.

Each person seeking release from active service from the Armed Forces, or assignment to noncombatant duties, as a conscientious objector, will provide the information indicated below as the minimum required for consideration of his request. This in no way bars the military departments from requiring such additional information as they desire. The individual may submit such other information as desired.